

HOUSE BILL 3323
By Hargrove

AN ACT to create and establish the "Small Claims Court of Putnam County".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The purpose of this act is to establish within Putnam County, Tennessee, an accessible, convenient, and informal forum for small civil cases in which the small claims of all complainants can be resolved and redressed inexpensively, expeditiously, fairly and effectively.

SECTION 2.

(a) A small claims court of the general sessions courts is established in Putnam County, Tennessee.

(b) The judges and clerks of the general sessions court shall serve as the judges and clerks of the small claims court divisions.

SECTION 3.

(a) The small claims court is not a court of record and shall have jurisdiction, concurrent with that of the general sessions court, in all non-criminal actions, other than actions for libel and slander, if the amount in controversy does not exceed seven hundred fifty dollars (\$750) inclusive of interest.

(b) The small claims court has authority to grant any appropriate relief, including money damages and equitable relief, except that injunctions and restraining orders may only be issued by agreement of all parties.

SECTION 4.

(a) The plaintiff may commence an action in the small claims court by filing with the clerk of the general sessions court a combination summons-complaint, hereinafter called the "civil warrant", which includes the name of the court, the names and addresses of the plaintiff(s) and defendant(s), the name of the county in which the action is commenced, and the statement of the claim in concise form, without technicality, including pertinent dates. In addition, the civil warrant shall include the following clearly and conspicuously stated information:

(1) The defendant may, if desired, have the case transferred from the small claims court to the regular docket of the general sessions court;

(2) If the defendant wishes to have the case heard in the small claims court, the defendant must first waive, or give up the right to be represented by an attorney, the right to appeal the decision of the court, and the right to a jury trial;

(3) If the defendant fails to appear, the court may order the defendant to pay the amount claimed by the plaintiff; and

(4) The judge may schedule a different time for trial if the assigned date is inconvenient.

(b) The defendant shall be notified of the claim and of the defendant's right to appear by being served with the civil warrant. The mode of service shall be by registered or certified mail with return receipt requested; if the receipt is not returned, the defendant shall be personally served with process as in other civil cases. No action in the small claims court may proceed further unless a return is made showing completed service by registered or certified mail, return receipt requested, or by personal service of process.

SECTION 5. A written answer or plea is not required of the defendant in an action in the small claims court; provided, however, the defendant may file a written answer or plea if so desired.

SECTION 6. The defendant may plead as a counterclaim or crossclaim any claim that at the time of serving the warrant the defendant may have against the plaintiff if: (1) the counterclaim or crossclaim is within the seven hundred fifty dollar (\$750) jurisdictional limit of the small claims court; and (2) the counterclaim or crossclaim arises out of the same transaction or occurrence that is the subject matter of the plaintiff's claim; (3) the counterclaim or crossclaim does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction. Actions in which the defendant's counterclaim exceeds the jurisdictional limit of the small claims court shall be removed to the regular docket of the general sessions court.

SECTION 7.

(a) The plaintiff, upon filing a claim, shall pay the then current general sessions civil warrant filing fee. If additional costs are accrued, the plaintiff is responsible for payment of such cost pending final adjudication by the court.

(b) The pauper's oath is available to the plaintiff as in other civil actions. No filing fee shall be required of the plaintiff who meets the requirements for initiating the action on the pauper's oath.

SECTION 8.

(a) The general sessions court clerk shall initially schedule a trial in the small claims court when the action is first filed.

(b) A party's first request for a continuance may be granted if the judge determines that such request is warranted and is in the interest of justice. A party's second request for a continuance, and all requests thereafter, may be granted only upon a showing of extraordinary circumstances justifying the continuance, unless all the parties and the judge agree thereto.

SECTION 9.

(a) A party may not file in the small claims court of the general sessions court more than three (3) claims in any one (1) calendar year.

(b) Any party who files a claim in the small claims court shall sign an affidavit with the clerk at the time of the filing the warrant stating that the party has not brought more than three (3) claims in one (1) calendar year.

(c) If any party files more than three (3) claims, then each subsequent cause shall be transferred to the regular general sessions court civil docket.

SECTION 10.

(a) The small claims court shall conduct hearings upon small claims in such manner as to do substantial justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules governing practice, procedure, pleading or evidence, except statutory provisions relating to privileged communications.

(b) No depositions may be taken, and no interrogatories or other discovery proceedings may be used under the small claims procedure.

SECTION 11. No attorney at law, except on his own behalf or as a witness, may take any part in the prosecution or defense of litigation in the small claims court. Provided, however, this section shall not be construed to prohibit an attorney from advising a party concerning the anticipated prosecution or defense of an action in the small claims court.

SECTION 12.

(a) The judge shall conduct an informal hearing, and develop all of the facts in the particular case. The judge may take testimony, disregard rules of pleading and evidence, summon any party to appear as a witness in the suit upon the judge's own motion, and do other acts which appear necessary to effect a correct judgment and speedy disposition of the case. These powers are in addition to any powers given to judges of the general sessions courts that are not inconsistent with this act.

(b) When judgment is to be rendered in an action pursuant to this act, and the party against whom it is to be entered requests an inquiry, or on the judge's own motion, the judge shall inquire fully into the parties' financial status and may stay execution and

order partial payments in such amounts, over such periods, and upon such terms, which may include payments to the clerk of the court, as seem just under the circumstances. After notice to the party and upon a showing by a preponderance of the evidence that the party has failed to meet an installment payment without just excuse, the stay of execution shall be vacated. When a stay of execution has not been ordered or when a stay of execution has been vacated as provided in this subsection, the party in whose favor the judgment has been entered may use all remedies available in the general sessions court for the enforcement of the judgment. Provided, however, no execution shall issue upon any judgment in the small claims court until after expiration of ten (10) days next following the date of entry of the judgment.

SECTION 13. The clerk of the small claims court, at the request of any party, shall prepare the civil warrant and other papers required to be filed in an action in the small claims court. The clerk shall send notice to the defendant by registered or certified mail, return receipt requested. In addition, the clerk shall cooperate fully with the parties; this requirement includes any questions that the parties may have concerning the small claims procedure. Provided, however, the clerk shall not give any legal advice nor express any opinion concerning the merits or probable outcome of the action.

SECTION 14.

(a) Before any trial in the small claims court, the judge shall inquire of the defendant whether the defendant understands and wishes to waive the rights to be represented by an attorney, to appeal the judgment of the court, and to receive a jury trial, and by so doing to have the case heard in the small claims court, or whether the defendant wishes to have the case transferred to the regular docket of the general sessions court and not to waive any of such rights. In addition, before any trial in the small claims court, both the plaintiff and the defendant shall sign a statement setting forth in clear and conspicuous language a waiver of the rights to be represented by an attorney, to appeal the decision of the court, and to receive a jury trial. If the plaintiff

declines to execute the waiver provided in this subsection, the action shall thereupon be dismissed without prejudice.

(b) A case shall be removed from the small claims court to the regular docket of the general sessions court if: (1) the defendant so requests; or (2) if either party declines to execute the waiver statement as provided in subsection (a) of this section; or (3) if a defendant's crossclaim or counterclaim exceeds the jurisdictional limit for the small claims court.

SECTION 15. In order for a plaintiff to be entitled to a default judgment, the plaintiff shall offer sufficient evidence of the claim against the defendant in order to make a prima facie showing that the plaintiff is entitled to judgment. The plaintiff shall offer additional evidence, if needed, to prove the amount owed to the plaintiff.

SECTION 16. The prevailing party in any action in the small claims court may be awarded the costs of the action.

SECTION 17. A trial in the small claims court shall be without a jury.

SECTION 18. An appeal may not be taken from the judgment or order of the small claims court except in a case when a default judgment has been entered; in such case an appeal may be taken to the circuit court in the same manner as provided by law for appeals from other judgments in the general sessions court. The pauper's oath is available for an appeal perfected pursuant to this section.

SECTION 19.

(a) Ten (10) days after the entry of a judgment in the small claims court and assuming no appeal has been taken as provided in Section 18 of this act, the judgment is then final, and execution may be issued thereon unless previously stayed by order of the judge or by operation of law.

(b) A judgment obtained under this act may be pleaded as res judicata only as the amount involved in the particular action, and such judgment shall not otherwise be deemed an adjudication of any fact at issue or found therein in any other action or court.

SECTION 20. All provisions relating to the general sessions court and the rules of the court apply to the small claims court as far as they may be applicable, and are not in conflict with this act. In case of a conflict, the provisions of this act shall control.

SECTION 21. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 22. This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed so as to effectuate its purposes stated in Section 1.

SECTION 23. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Putnam County. Its approval or non-approval shall be proclaimed by the presiding officer of the county legislative body of Putnam County and certified to the secretary of state.

SECTION 24. For the purposes of approving or rejecting the provisions of this act, it shall be effective upon becoming law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 23.